

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

James A. White, Sr.,	:	
Plaintiff,	:	Case No.: _____
-vs-	:	Judge _____
Menard, Inc.	:	
Defendant.	:	

NOTICE OF REMOVAL

Defendant Menard, Inc. hereby files this Notice of Removal, pursuant to 28 U.S.C. § 1441, with the United States District Court for the Southern District of Ohio, Eastern Division. As grounds for removal, Defendant states as follows:

1. This case was commenced and is now pending in the Common Pleas Court of Franklin County, Ohio, designated as Case No. 19CV003836 on the docket, a true and accurate copy of the Complaint which is attached hereto as Exhibit “A”.
2. The Complaint was filed on May 10, 2019. Defendant Menard, Inc. was served on May 15, 2019. On May 23, 2019, Menard, Inc. filed its Answer to the Complaint, a true and accurate copy of which is attached as Exhibit “B”.
3. At the time of Plaintiff’s commencement of this action, Plaintiff was a citizen of the State of Ohio.
4. Menard, Inc. is a foreign corporation organized and existing under the laws of the State of Wisconsin. It was, at the time of commencement of this action, and still is, a non-citizen, having its principal place of business in the State of Wisconsin.

5. The United States District Court, pursuant to the provisions of 28 U.S.C. § 1332, has jurisdiction over this action because there is complete diversity, and, upon information and belief, the matter in controversy exceeds the sum of \$75,000, exclusive of interest and costs.

6. The United States Supreme Court has determined that “a defendant’s notice of removal need include only a plausible allegation that the amount in controversy exceeds the jurisdictional threshold.” *Dart Cherokee Basin Operating Co., LLC v. Owens*, 135 S.Ct. 547, 554 (2014). While “[t]he amount claimed by the plaintiff usually controls . . . the defendant can remove the case under 28 U.S.C. § 1441(a) if it is shown that the amount in controversy is “more likely than not” above \$75,000.” *Hampton v. Safeco Ins. Co.*, 614 F.App’x 321, 323 (6th Cir.2015). This is because “removal of the action is proper on the basis of an amount in controversy asserted under subparagraph (A) if the district court finds, by the preponderance of the evidence, that the amount in controversy exceeds the amount specified in section 1332(a).” 28 U.S.C.S. 1446.

7. The Complaint alleges that Plaintiff has suffered multiple injuries and these injuries are permanent causing pain, suffering, mental anguish and a permanent disability. (Complaint ¶ 6). The disabilities are alleged to have deprived the Plaintiff of a normal way of life. (*Id.*). Further, the Complaint claims Plaintiff has incurred medical and hospital expenses due to the permanent nature of his injuries and he will incur future medical expenses. (*Id.* at ¶ 7). Likewise, Plaintiff contends he has suffered a loss of earning capacity and lost wages. (*Id.* at ¶ 8). He contends his loss of earning capacity is permanent. (*Id.*). Finally, Plaintiff demands pre and post judgment interest, in addition to attorney fees. (See Complaint Demand). In addition, counsel for Menard has reached out to Plaintiff’s counsel to discuss whether Plaintiff’s counsel would agree that the amount in controversy is less than \$75,000.00. Plaintiff’s counsel has refused to agree. As such, it is more likely than not that the amount in controversy is greater than \$75,000.00.

8. This Notice is filed pursuant to 28 U.S.C. § 1441 within the time limits prescribed by 28 U.S.C. § 1446(b).

9. Defendant will give written notice of the filing of this notice as required by 28 U.S.C. § 1446(d).

WHEREFORE, Defendant Menard, Inc. provides notice that this action is removed to the United States District Court for the Southern District of Ohio, Eastern Division, pursuant to 28 U.S.C. §§ 1441 and 1446, and that the Common Pleas Court of Franklin County, Ohio, shall proceed no further unless this case is remanded.

Respectfully submitted,

/s/ Patrick Kasson

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Counsel for Defendant Menard, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing document was served via the Court's ECF System and/or electronic mail to all counsel of record and/or electronic mail this 29th day of May, 2019 to all parties of record.

/s/ Patrick Kasson

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